Supreme Court, U.S.
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No. 05-694 NOV 28 2005

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In The

Supreme Court of the United States

SUWIT PRASOPRAT,

Petitioner,

v.

MICHAEL BENOV, Warden of the Metropolitan Detention Center,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

LAW OFFICES OF BARRY O. BERNSTEIN
BARRY O. BERNSTEIN, ESQ.
Counsel of Record
KARYN H. BUCUR, ESQ.
3727 W. Magnolia Blvd., Suite 767
Burbank, California 91510
Attorneys for Petitioner
Telephone: (818) 558-1717
Fax: (818) 562-7672

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. May the extradition court deny extradition of a United States citizen based on the "humanitarian exception" to rule of non-inquiry where the citizen faces certain death in the requesting country for a crime that in the United States that could result in an eight-year sentence under the Advisory United States Sentencing Guidelines?

2. Does federal due process require that a United States citizen who is the subject of an extradition request may seek discovery of the requesting country's procedures and conditions if he invokes the "humanitarian exception" to the rule of non-inquiry?

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PETITION FOR A WRIT OF CERTIORARI

The petitioner Suwit Prasoprat respectfully prays that a writ of certiorari issue to review the decision issued by the United States Court of Appeals for the Ninth Circuit's decision affirming the judgment of the district court affirming Prasoprat's habeas petition.

OPINION BELOW

The Ninth Circuit's opinion is reported as *Suwit Prasoprat v. Michael Benov*, 421 F. 3d 1009 (9th Cir. 2005). Appendix 1. The district court's decision in this case is reported at *Suwit Prasoprat v. Michael Benov*, 294 F. Supp. 2d 1165 (C. D. Cal. 2003.) Appendix 2.

JURISDICTION

On August 31, 2005, the United States Court of Appeals for the Ninth Circuit affirmed the district court's decision (App. "1".) Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Section 3184 of Title 28 of the United States Code provides:

> Section 3184. Fugitives from foreign country to United States
>
> Whenever there is a treaty or convention for extradition between the United States and any foreign government, or

in cases arising under section 3181(b), any justice or judge of the United States, or any magistrate [United States magistrate judge] authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, or provided for under section 3181(b), issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate [United States magistrate judge], to the end that the evidence of criminality may be heard and considered. Such complaint may be filed before and such warrant may be issued by a judge or magistrate [United States magistrate judge] of the United States District Court for the District of Columbia if the whereabouts within the United States of the person charged are not known or, if there is reason to believe the person will shortly enter the United States. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, or under section 3181(b), he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender.

STATEMENT OF THE CASE[1]

Mr. Suwit Prasoprat is a United States citizen. "In 1998, confidential informant reported to an agent of the Drug Enforcement Administration ("DEA") that Prasoprat was involved in heroin trafficking between Bangkok, Thailand, and Los Angeles. The DEA monitored Prasoprat for several years and, in 2001, the United States filed a complaint in the United States District Court on behalf of the Government of the Kingdom of Thailand, seeking Prasoprat's extradition to Thailand pursuant to the extradition treaty between the United States and Thailand. The complaint alleged that Prasoprat and another individual were wanted in Thailand for drug offenses that are covered by the extradition treaty. Prasoprat was ordered detained by the magistrate judge.

Prasoprat filed a motion for discovery, seeking information allegedly in the government's "exclusive possession" that related to the use of the death penalty in Thailand as punishment for drug offenses. Prasoprat argued that the extradition request violated the extradition treaty because the offense for which extradition was sought was punishable by death in Thailand, but not in the United States. He therefore sought an order "for the government to disclose any information that the death penalty is the punishment for drug convictions in Thailand.

The magistrate judge denied Prasoprat's discovery motion. He reasoned that the extradition treaty explicitly placed the authority to examine the issue of the death

[1] For the purposes of this petition, Prasoprat adopts the background as reported by the Court of Appeals and repeats it here.

penalty in determining extradition within the executive branch, not the judicial branch. The court thus ruled that discovery regarding the availability of the death penalty was not appropriate.

Following an extradition hearing, the magistrate judge determined that the government had established probable cause to sustain the narcotics charges. The court therefore entered an extradition certification, ordering that Prasoprat was extraditable and certifying the matter to the United States Secretary of State to issue a warrant to extradite Prasoprat.

Prasoprat then filed this petition for a writ of habeas corpus. The magistrate judge submitted a report and recommendation to the district court, recommending that the petition be denied. The district court adopted the report and denied Prasoprat's petition. See *Prasoprat v. Benov*, 294 F. Supp. 2d 1165 (C.D. Cal. 2003). Prasoprat filed a timely notice of appeal.

The district court issued a certificate of appealability on two grounds: (1) the extradition court's denial of Prasoprat's discovery request for information regarding the death penalty in Thailand for drug possession; and (2) the extradition court's refusal to deny extradition on humanitarian grounds. (App 1.) The Ninth Circuit affirmed the district court's decision to deny the petition for a writ of habeas corpus. *Prasoprat v. Benov*, 421 F. 3d 1009 (9th Cir. 2005).

On October 25, 2005, the Ninth Circuit issued an Order granting Prasoprat's motion to stay the mandate pending the filing of a petition for a writ of certiorari and extending the stay of extradition. (App. 2.)

REASONS FOR GRANTING THE WRIT

A. EXTRADITION COURTS MAY DENY EXTRADITION OF A UNITED STATES CITIZEN BASED ON THE "HUMANITARIAN EXCEPTION" TO THE RULE OF NON-INQUIRY, ESPECIALLY IN A CASE WHERE THE CITIZEN IS FACING THE DEATH PENALTY AND OTHER TORTUOUS CONDITIONS IN THE REQUESTING COUNTRY FOR A CRIME THAT IN THE UNITED STATES COULD RESULT IN AN EIGHT YEAR SENTENCE

Extradition from the United States is governed by 18 U.S.C. § 3184 which confers jurisdiction on a judge of the United States to conduct an extradition hearing under the relevant extradition treaty between the United States and the requesting nation. *Cornejo-Barreto v. Seifert*, 218 F. 3d 1004, 1009 (9th Cir. 2000).

Extradition is initiated by a request from the foreign state to the Department of State. The Department of State determines whether the request is within the relevant treaty, and if so, forwards the request to the Department of Justice. The request is eventually forwarded to the United States Attorney for the judicial district where the person sought is located. The U.S. Attorney then files a complaint in the district court and seeks an arrest warrant. *Cornejo-Barreto v. Seifert, supra*, 218 F. 3d at 1009.

The person sought is brought before a magistrate for a hearing. The purpose of the hearing before the magistrate is to determine whether (1) the crime is extraditable and (2) there is probable cause to sustain the charge. If these two requirements are met, the judicial officer must certify the individual as extraditable to the Secretary of State. *Id.* The "rule of non-inquiry" usually requires extradition

courts to refrain from undertaking inquiries into the justice systems of foreign countries. *Cornejo-Barreto v. Seifert, supra*, 218 F. 3d at 1009. However, in limited instances, Prasoprat argues that the federal courts may inquire into the justice systems and conditions of requesting countries who are seeking to prosecute United States citizens and that the federal courts have the power to deny extradition based on the "humanitarian exception" to the rule of non-inquiry. *Arnbjornsdottir-Mendler v. United States*, 721 F. 2d 679, 683 (9th Cir. 1983).

In the present case, Prasoprat, who is a United States citizen, was arrested pursuant to an extradition arrest warrant based on an extradition request from the Kingdom of Thailand. (ER 34-35.)[2] The alleged offense involved transportation of heroin into the United States from Thailand for sale. (ER 35.) The penalty for drug offenses in Thailand is death.

During the extradition proceedings, Prasoprat requested that extradition to Thailand be denied based on the "humanitarian exception" to the rule of non-inquiry because Thailand routinely executes drug offenders. Prasoprat is certain that if he were extradited to Thailand and was convicted of transportation of heroin, he would suffer a violent death.

In the district court, Prasoprat requested discovery in the possession of the United States government relating to the death penalty for drug offenses in Thailand to support his request that extradition should be denied based on the humanitarian exception to the rule of non-inquiry. In

[2] "ER" refers to the Excerpts of Record filed in the United States Court of Appeal for the Ninth Circuit.

support of his motion, Prasoprat provided the district court with newspaper articles that supported his belief that he would be shot and killed if he were extradited to Thailand. Three of the articles stated:

- "Execute them immediately ... the Interior Ministry is seeking to have orders for the execution of drug convicts carried out immediately, in the hope of discouraging drugs and drug-related crimes." Excerpt from *Bangkok Post*, dated October 15, 1998.

- "If we want the death penalty to have an obvious effect, it should be done right away ... Under the law, drug convicts face the death penalty ..."

- "The officers who carried out the *extrajudicial* killing of the amphetamine suspects deserved credit for their anti-drug efforts." Excerpt from *Bangkok Post*, dated January 14, 1997. (ER 84-87.)

Thus, Prasoprat's fears of death are well [illegible]unded. Recently, Prasoprat found articles confirming that Thailand is continuing to execute people for drug offenses: Human Rights Watch Publications recently reported that in Thailand that a "war on drugs" would be waged on drug dealers. The article continued, "The use of the term 'war' was apt: over the next three months more than 2,000 people were killed as the government effectively declared 'open season' on those accused of involvement in the drug trade. The crackdown saw rampant human rights violations, including *government promotion of violence* against drug suspects, *extrajudicial executions*, blacklisting of drug suspects without due process, intimidation of human rights defenders, and violence and other breaches of due process by the Royal Thai Police." (Appendix 6.) In addition, The Bangkok Post reported on May 29, 2005, that